M.R. in *Saltman Engineering Co. Ltd. & Ors.* v. *Campbell Engineering Co. Ltd.*[4] at page 211 of the report reiterated the position thus:

"The main part of the claim is based on breach of confidence, in respect of which a right may be infringed without the necessity of there being any contractual relationship.

I will explain what I mean. If two parties make a contract, under which one of them obtains for the purpose of the contract or in connection with it some confidential matter, even though the contract is silent on the matter of confidence the law will imply an obligation to treat that confidential matter in a confidential way, as one of the implied terms of the contract; but the obligation to respect confidence is not limited to cases where the parties are in contractual relationship."

As to the contention that such information that the defendants had was in fact gathered by them from material which was available to anybody, if such gathering of the information took place while the defendants were in the employ of the plaintiffs and in the course of such employment then it could very well be that the use of what was thus gathered without the consent of the plaintiffs, would be an infringement of their rights.

"On the other hand, it is perfectly possible to have a confidential document, be it a formula, a plan, a sketch, or something of that kind, which is the result of work done by the maker upon materials which may be available for the use of anybody but what makes it confidential is the fact that the maker of the document has used his brain and thus produced a result which can only be produced by somebody who goes through the same process."
[Saltmen Engineering (supra)]

A passage from the judgment of Roxburgh J. in *Terrapin Ltd.* v. *Builders Supply Co. (Hayes) Ltd. & Others*[5] which was quoted with approval by the Court of Appeal in *Cranleigh Precision Engineering Ltd.* v. *Bryant*[6] starts off,

"As I understand it, the essence of this branch of the law, whatever the origin of it may be, is that a person who has obtained information in confidence is not allowed to use it as a spring-board for activities detrimental to the person who made the confidential communication, and spring-board it remains even when all the features have been published or can be ascertained by actual inspection by any member of the public."

It is as it should be that if the defendants or any of them has confidential information they should be restrained from misusing it.

Accordingly it is my judgment that of the orders made on June 6, 1983 that restraining the 4th defendant from dealing with its assets including monies held in its account No: 9073 with tbe branch of Bank Bumiputra at Complex Antara Bangsa, Jalan Sultan Ismail, Kuala Lumpur, should be set aside and I so order; otherwise the application enclosure (13) is dismissed. Since the defendants have partially succeeded in the application I think that the just order in respect of the costs of and incidental to the application should be that each party bears its own costs and I so order.

Order accordingly.

Solicitors: *D.P. Vijandran & Associates; Shearn Delamore & Co.*

MUNANDU v. PUBLIC PROSECUTOR

[R.Cr. J. (Gunn Chit Tuan J.) March 6, 1984]
[Kuala Lumpur – Federal Territory Criminal Revision No. 1 of 1984]

Criminal Law and Procedure – Charge of theft – Plea of guilty – Whether accused fully understood nature of charge – Plea not unequivocal plea of guilty.

In this case, the accused had pleaded guilty to a charge of theft of a bicycle. The learned Magistrate accepted his plea. Before sentence was passed the accused said in mitigation to the effect "I was drunk at the time. I took the bicycle by mistake". The accused claimed that he went on his own ladies bicycle to have a drink during the lunch break. He parked his bicycle alongside other bicycles and after his drink he took a "ladies bicycle" which he thought was his and left. He said he pleaded guilty as he was told it was a minor case and his job would not be affected and that he would receive a reprimand. The learned Magistrate fined him $300 in default three months' imprisonment and as a result of the conviction the accused who had been employed as a Government servant lost his job and pension rights. The accused instructed Counsel to ask the High Court to exercise its powers of revision.

Held: in this case the accused did not fully understand the charge or know that if he really in good faith and believing the bicycle to be his property had taken it out of the owner's possession, then he did not take it dishonestly and therefore did not commit theft. The finding and sentence must be reversed and the case remitted for re-trial before another Magistrate.

Cases referred to:

(1) *Heng Kim Khoon* v. *Public Prosecutor* [1972] 1 M.L.J. 30, 31.

(2) *Yeo Sim Huat* v. *Public Prosecutor* [1961] M.L.J. 328.

(3) *Lau Eng Teck* v. *Public Prosecutor* [1965] 1 M.L.J. 34.

(4) *Rex* v. *Lim Soon Gong & Ors.* [1939] M.L.J. 10, 12.

CRIMINAL REVISION.

T.S. Dhillon for the applicant.

Phang Ah Hee (Deputy Public Prosecutor) for the Public Prosecutor.

Cur. Adv. Vult.

Gunn Chit Tuan J.: I called for the record of proceeding in this case which was brought to my attention by Mr. T.S. Dhillon, an advocate & solicitor who was instructed by the accused to ask the High Court to exercise its powers of revision in respect of criminal proceedings and matters in subordinate courts under section 31 of the Courts of Judicature Act, 1964 (Revised-1972).

The accused was charged in the Magistrate's Court, Kuala Lumpur, for theft of a bicycle valued at about $50/– between 12.30 p.m. and 1.30 p.m. at Jalan Pudu. The accused, who was unrepresented, pleaded guilty on October 25, 1983 and the learned Magistrate accepted his plea accordingly. But before sentence was passed it was recorded that the accused had said in mitigation as follows:–

> "Saya sedang mabuk pada waktu kejadian. Saya tersilap ambil baisikal."

According to the instructions given to Mr. Dhillon, the accused, who is a gardener employed by Maktab Perguruan Ilmu Khas, had gone to Jalan Pudu on his own "ladies bicycle" to have a drink during the lunch break. He parked his bicycle alongside other bicycles and after his drink he took a "ladies bicycle" which he thought was his and left. He was later arrested by the police and taken to the police station. According to Mr. Dhillon the accused had pleaded guilty because he was told that it was a minor case and that his job would not be affected under the prevailing circumstances and that he would receive a reprimand with no custodial sentence or fine. However, the learned Magistrate fined him $300/– in default three months' imprisonment and as a result of the conviction, the accused, who has been employed as a Government servant for the last 23 years, lost his job and pension rights.

It was the contention of Mr. Dhillon that the learned Magistrate had not considered carefully whether the accused fully understood the nature of the charge to which he had pleaded guilty or alternatively whether the accused knew and appreciated the essential ingredients of the offence of theft. He referred to *Heng Kim Khoon* v. *Public Prosecutor*[1] in which case Sharma J. (as he then was) had said that

> "... A plea of guilty may be accepted by the court and the accused convicted on it, but the court is not bound to accept a plea of guilty in all cases. The court must carefully consider whether the accused has fully understood the nature of the charge to which he pleads guilty. The accused is not to be taken at his word when he pleads guilty unless the plea is expressed in unmistakeable terms with full appreciation of the essential ingredients of the offence. This rule of law is applied with all the greater stringency when the offence charged is complicated or serious."

I agreed with the contention of counsel that where an accused is unrepresented every ingredient and question of the charge should be explained to the accused by the Magistrate and his replies recorded, and that no plea of guilty should be recorded if there is doubt that the plea is a qualified plea of guilty. (See *Yeo Sim Huat* v. *Public Prosecutor*[2]). In this case it was clear that the accused's plea did not constitute an unequivocal plea of guilty and his plea should not have been accepted (*Lau Eng Teck* v. *Public Prosecutor*[3]). I was satisfied after examining the record of proceeding in this case that the accused did not fully understand the charges or knew that if he really in good faith and believing the bicycle to be his own property had taken it out of the owner's possession, then he did not take it dishonestly, and therefore did not commit theft. (*Rex* v. *Lim Soon Gong & Ors.*)[4]. In the circumstances of this case, I therefore reversed the finding and sentence and ordered the case to be remitted for re-trial before another Magistrate.

Order accordingly.

Solicitors: *Dhillon & Co.*